

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IRA L. JACKSON,

Plaintiff,

v.

3:04-CV-0812

JO ANNE BARNHART, Commissioner
of Social Security,

Defendant.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

The government moves to dismiss Plaintiff's Complaint on the ground that he failed to exhaust his administrative remedies. Plaintiff also moves for summary judgment on his claims.

Before this Court may review an appeal of a Social Security determination, an individual must obtain a "final decision of the Commissioner." 42 U.S.C. § 405(g). A decision is "final" under the Social Security procedure once the Appeals Council has either denied review or decided the case after review. Mathews v. Chater, 891 F.Supp. 186, 188 (S.D.N.Y. 1995), aff'd, 101 F.3d 681 (2d Cir. 1996) (table); see 20 C.F.R. § 404.981, § 416.1481.

The evidence before the Court in this case is that Plaintiff initially claimed benefits from the Social Security Administration. Plaintiff received an initial determination. Plaintiff then requested a hearing before an administrative law judge. Plaintiff then commenced the

instant action without first presenting the matter to the Appeals Council. Because Plaintiff did not present his case to the Appeals Council, he did not obtain a final decision of the Commissioner. Furthermore, the Court has not been presented with any reasons why the exhaustion requirement should be waived under the facts and circumstances of this case. Accordingly, to the extent that the complaint is challenging the benefit determination, it must be dismissed for failure to exhaust administrative remedies.

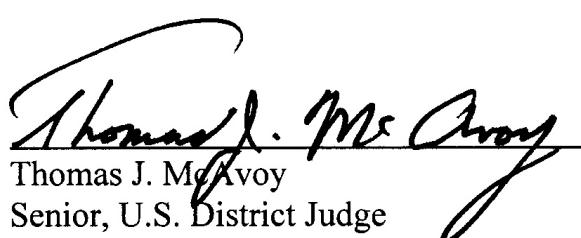
The Complaint, however, apparently asserts a claim pursuant to the Americans with Disabilities Act. The government did not address this claim in its motion papers. Accordingly, this claim will not be dismissed.

With respect to Plaintiff's recently filed motion for summary judgment, the Court finds insufficient grounds upon which to award judgment to Plaintiff on the Americans with Disabilities Act claim as a matter of law. Plaintiff fails to point to sufficient evidence from which a fair-minded jury could only conclude that he was discriminated against on account of a disability. Accordingly, Plaintiff's motion is denied.

For the foregoing reasons, the government's motion seeking dismissal of the Complaint insofar as it seeks review of a determination of Social Security benefits is GRANTED. In all other respects, the government's motion is DENIED. Plaintiff's motion for summary judgment is DENIED.

IT IS SO ORDERED.

Dated: June 6, 2005



Thomas J. McAvoy
Senior, U.S. District Judge